

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4117 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHMED HUSSEINBHAI NAGAR

Versus

STATE OF GUJARAT

Appearance:

MS PAURAMI B SHETH for Petitioner
MRS VIDHATRY K PAREKH AGP for Respondent No. 1
MS KJ BRAHMBHATT for Respondent No. 2
MR BS PATEL for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/11/96

ORAL JUDGEMENT

The petitioner who was initially appointed by the then Chhotaudepur Municipality as Peon on 1.5.1960. Upon conversion of municipality into Nagar Panchayat under the Gujarat Panchayat act, 1961, the petitioner was allocated to Chhotaudepur Nagar Panchayat, respondent no. 2 herein. He served respondent no. 2 panchayat till

13.6.1980 the date on which he retired from service on reaching the age of superannuation. Since his retirement, the Government on 20.10.1983 passed a resolution, pursuant to the order made by the High Court and confirmed by the Hon. Supreme Court, extending the benefits, inter alia, of leave travel concesssion and of leave encashment to the panchayat servants who were appointed by the former municipality on or before 1st April, 1963 and who were allocated to panchayat service on 11th December, 1969.

The petitioner has relied upon the said resolution and has prayed that in view of the benefits extended to the employees of the former municipalities which were converted into panchayat, the petitioner was entitled to the benefits of encashment of leave travel concession and of leave encashment.

Learned advocate Miss Brahmbhatt has appeared for the respondent no. 2 panchayat and has contested the claim of the petitioner. She has contended that the resolution under which the petitioner has based his claim was passed on 20.10.1983 and the said resolution has not been given restrospective effect. The petitioner had already been retired from service before 20.10.1983. He therefore, is not entitled to the benefits under the said resolution. She has also relied upon the Government resolution dated 27.6.1984 under which the Government has taken decision to allow the Government servants to encash the benefits of leave travel concession. She has relied upon paragraph-5 of the said resolution and has submitted that prior to 1984 benefit of leave travel concession was available to a Government servant for actual travel undertaken and expenditure incurred by him. Since the petitioner has not incurred any expenditure on actual travel before the date of his retirement, he cannot claim encashment of the benefits of leave travel concession.

Paragraph-5 of the aforesaid resolution dated 27.6.1984 makes it express that the benefits of encashment of leave travel concession would be admissible to the Government servant for the block period commencing from the year 1984. Thus, before the year 1984, a Government servant was not entitled to the benefits of encashment of the leave travel concession. In the circumstances, the said benefits cannot be claimed by the petitioner. I, therefore, reject the petitioner's claim for encashment of leave travel concession.

The employees of the former municipality had lodged their claim for benefits for pay and of other

service conditions which were admissible to the Government servant. The said claim was upheld by this Court by its judgment delivered in the year 1977. The Court considering the rival contentions held that the panchayat employees including the employees of the former municipality converted into panchayat were entitled to the same pay and benefits of other service conditions as were admissible to the Government servants. The Court specifically directed "to revise subsequently such pay-scales and other conditions of service as per the accepted recommendations of the 1st Pay Commission (Sarela Commission) in the said matter with effect from February 11, 1969." The Government, however, challenged the said judgment before the Hon'ble Supreme Court which was confirmed by the Hon. Supreme Court on 27.1.1983. Even after the directions issued by the Hon. Supreme court on 27.1.1983 necessary resolution was passed by the Government on 28.10.1983. I am, therefore, of the opinion that in view of the directions issued by the Court, the benefits of other service conditions available to the Government servant was required to be made applicable with effect from 11.2.1969. The said benefits cannot be taken away merely because the Government has passed the necessary resolution as late as on 28.10.1983. Since the said resolution has been passed pursuant to the aforesaid directions of the Court, it is required to be held that the benefits mentioned in the said resolution are required to be extended with effect from 11.2.1969. The petitioner, who was serving under the former Municipality on 11.2.1969 and was allocated to the respondent no. 2 panchayat on 11.12.1969 and retired from service on 13.6.1980 is entitled to the benefits of leave encashment as would be applicable to the Government servants on 13.6.1980.

I am told at the Bar that since the amendment in the Gujarat Municipalities Act, 1963 which has become effective from 15th April, 1994, respondent No.2 Panchayat has been converted into a Municipality. Under section 266B, the provisions have been made in respect of conversion of the Nagar Panchayat into Municipality. Cl.(a) of said section, inter-alia, provides that on such conversion of Panchayat functioning in the local area shall stand dissolved. Cl.(1) provides, inter-alia, that all such legal proceedings instituted by or against such Panchayat or any officer of the dissolved panchayat pending at the said date shall be continued by or against interim Municipality until the Municipality is constituted and on constitution of Municipality, by or against such Municipality, as if the local area had been the Municipal Borough when such proceedings were

instituted.

In view of the aforesaid provisions, the successor municipality of respondent NO. 2 shall be liable to comply with the orders that are issued by this Court hereinbelow.

In view of the above discussion, this petition is partly allowed. The petitioner's claim for encashment of leave travel concession is rejected. Respondent no. 2 Nagar Panchayat is directed to grant the benefits of leave encashment to the petitioner in accordance with the rules prevalent at the time of his retirement. Since the respondent no. 2 Nagar Panchayat has been converted into a municipality, the successor municipality is directed to carry out the aforesaid directions within a period of three months from the date of the receipt of the copy of this order. The petitioner shall also be entitled to an interest at the rate of 12% p.a. on the aforesaid amount of leave encashment from the date of his retirement till the date of the payment. The successor Municipality of the respondent no. 2 Panchayat shall pay the costs of this petition to the petitioner. Rule is made absolute accordingly with costs.
